# House of Representatives

General Assembly

**File No. 767**

*January Session, 2009*

Substitute House Bill No. 6628

*House of Representatives, April 21, 2009*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## *AN ACT ADOPTING THE REVISED UNIFORM ARBITRATION ACT.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2009*) As used in sections 1 to 31, inclusive, of this act:

(1) "Arbitration organization" means an association, agency, board, commission or other entity that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means the Superior Court.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate,

trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 2. (NEW) (*Effective October 1, 2009*) (a) Except as otherwise provided in sections 9, 15, 19, 20 and 22 to 24, inclusive, of this act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when the notice comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Sec. 3. (NEW) (*Effective October 1, 2009*) (a) Sections 1 to 31, inclusive, of this act govern an agreement to arbitrate made on or after October 1, 2009, except that (1) said sections shall not apply to any agreement or arbitration proceeding governed by chapter 48, 68, 113, 166 or 743b of the general statutes, and (2) chapter 909 of the general statutes, revised to January 1, 2009, shall apply to grievance arbitration provisions agreed to in collective bargaining agreements.

(b) Sections 1 to 31, inclusive, of this act govern an agreement to arbitrate made before October 1, 2009, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

Sec. 4. (NEW) (*Effective October 1, 2009*) (a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of sections 1 to 31,

inclusive, of this act to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of subsection (a) of section 5 of this act, subsection (a) of section 6 of this act, section 8 of this act, subsection (a) or (b) of section 17 of this act and section 26 or 28 of this act;

(2) Agree to unreasonably restrict the right under section 9 of this act to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under section 12 of this act to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right under section 16 of this act of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under sections 1 to 31, inclusive, of this act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection (a) of section 3 of this act, section 7, 14 or 18 of this act, subsection (d) or (e) of section 20 of this act, or section 22, 23, 24, 25, 29, 30, 31 or 32 of this act.

Sec. 5. (NEW) (*Effective October 1, 2009*) (a) Except as otherwise provided in section 28 of this act, an application for judicial relief under sections 1 to 31, inclusive, of this act shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under sections 1 to 31, inclusive, of this act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the

motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

Sec. 6. (NEW) (*Effective October 1, 2009*) (a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Sec. 7. (NEW) (*Effective October 1, 2009*) (a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not pursuant to subsection (a) or (b) of this section order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in section 27 of this act.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Sec. 8. (NEW) (*Effective October 1, 2009*) (a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b) of this section.

Sec. 9. (NEW) (*Effective October 1, 2009*) (a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties, or in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under subsection (c) of section 15 of this act not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack or insufficiency of notice.

Sec. 10. (NEW) (*Effective October 1, 2009*) (a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Sec. 11. (NEW) (*Effective October 1, 2009*) (a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

Sec. 12. (NEW) (*Effective October 1, 2009*) (a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the

agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under subdivision (2) of subsection (a) of section 23 of this act for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court under subdivision (2) of subsection (a) of section 23 of this act may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party is presumed to act with evident partiality under subdivision (2) of subsection (a) of section 23 of this act.

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under subdivision (2) of subsection (a) of section 23 of this act.

Sec. 13. (NEW) (*Effective October 1, 2009*) If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under

subsection (c) of section 15 of this act.

Sec. 14. (NEW) (*Effective October 1, 2009*) (a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by section 12 of this act does not cause any loss of immunity under this section.

(d) In a judicial, administrative or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under subdivision (1) or (2) of subsection (a) of section 23 of this act if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to

testify, the court shall award to the arbitrator, organization or representative reasonable attorney's fees and other reasonable expenses of litigation.

Sec. 15. (NEW) (*Effective October 1, 2009*) (a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 11 of this act to continue the proceeding and to resolve the controversy.

Sec. 16. (NEW) (*Effective October 1, 2009*) A party to an arbitration proceeding may be represented by a lawyer.

Sec. 17. (NEW) (*Effective October 1, 2009*) (a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious and cost effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding

to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

Sec. 18. (NEW) (*Effective October 1, 2009*) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 19 of this act. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 22 of this act, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies or corrects the award under section 23 or 24

of this act.

Sec. 19. (NEW) (*Effective October 1, 2009*) (a) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

Sec. 20. (NEW) (*Effective October 1, 2009*) (a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in subdivision (1) or (3) of subsection (a) of section 24 of this act;

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within twenty days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.

(d) If a motion to the court is pending under section 22, 23 or 24 of

this act, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in subdivision (1) or (3) of subsection (a) of section 24 of this act;

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to subsection (a) of section 19 of this act and sections 22, 23 and 24 of this act.

Sec. 21. (NEW) (*Effective October 1, 2009*) (a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding.

(d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or

other exemplary relief.

Sec. 22. (NEW) (*Effective October 1, 2009*) After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 20 or 24 of this act or is vacated pursuant to section 23 of this act.

Sec. 23. (NEW) (*Effective October 1, 2009*) (a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was: (A) Evident partiality by an arbitrator appointed as a neutral arbitrator; (B) corruption by an arbitrator; or (C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to section 15 of this act so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection (c) of section 15 of this act not later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to section 19 of this act or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 20 of this act, unless the movant alleges that the award was procured by corruption, fraud or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in subdivision (5) of subsection (a) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4) or (6) of subsection (a) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subsection (b) of section 19 of this act for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Sec. 24. (NEW) (*Effective October 1, 2009*) (a) Upon motion made within ninety days after the movant receives notice of the award pursuant to section 19 of this act or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 20 of this act, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

Sec. 25. (NEW) (*Effective October 1, 2009*) (a) Upon granting an order confirming an award, vacating an award without directing a rehearing, modifying an award or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

Sec. 26. (NEW) (*Effective October 1, 2009*) (a) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under sections 1 to 31, inclusive, of this act.

Sec. 27. (NEW) (*Effective October 1, 2009*) A motion pursuant to section 5 of this act shall be made in the court for the judicial district in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court for the judicial district in which it was held. Otherwise, the motion may be made in the court for any judicial district in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court for any judicial district in this state. All subsequent motions shall be made in the court hearing the

initial motion unless the court otherwise directs.

Sec. 28. (NEW) (*Effective October 1, 2009*) (a) An appeal may be taken from: (1) An order denying a motion to compel arbitration; (2) an order granting a motion to stay arbitration; (3) an order confirming or denying confirmation of an award; (4) an order modifying or correcting an award; (5) an order vacating an award without directing a rehearing; or (6) a final judgment entered pursuant to sections 1 to 31, inclusive, of this act.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

Sec. 29. (NEW) (*Effective October 1, 2009*) In applying and construing the uniform provisions of sections 1 to 31, inclusive, of this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact such uniform provisions.

Sec. 30. (NEW) (*Effective October 1, 2009*) The provisions of sections 1 to 31, inclusive, of this act governing the legal effect, validity or enforceability of electronic records or signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act.

Sec. 31. (NEW) (*Effective October 1, 2009*) The provisions of sections 1 to 30, inclusive, of this act do not affect an action or proceeding commenced or right accrued before October 1, 2009. Subject to section 3 of this act, an arbitration agreement made before October 1, 2009, is governed by sections 52-408 to 52-424, inclusive, of the general statutes.

Sec. 32. Subsection (a) of section 37-3a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) Except as provided in sections 37-3b, 37-3c and 52-192a, interest

at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings under chapter 909 or sections 1 to 31, inclusive, of this act, including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. Judgment may be given for the recovery of taxes assessed and paid upon the loan, and the insurance upon the estate mortgaged to secure the loan, whenever the borrower has agreed in writing to pay such taxes or insurance or both. Whenever the maker of any contract is a resident of another state or the mortgage security is located in another state, any obligee or holder of such contract, residing in this state, may lawfully recover any agreed rate of interest or damages on such contract until it is fully performed, not exceeding the legal rate of interest in the state where such contract purports to have been made or such mortgage security is located.

| This act shall take effect as follows and shall amend the following sections: | | |
|---|---|---|
| Section 1 | *October 1, 2009* | New section |
| Sec. 2 | *October 1, 2009* | New section |
| Sec. 3 | *October 1, 2009* | New section |
| Sec. 4 | *October 1, 2009* | New section |
| Sec. 5 | *October 1, 2009* | New section |
| Sec. 6 | *October 1, 2009* | New section |
| Sec. 7 | *October 1, 2009* | New section |
| Sec. 8 | *October 1, 2009* | New section |
| Sec. 9 | *October 1, 2009* | New section |
| Sec. 10 | *October 1, 2009* | New section |
| Sec. 11 | *October 1, 2009* | New section |
| Sec. 12 | *October 1, 2009* | New section |
| Sec. 13 | *October 1, 2009* | New section |
| Sec. 14 | *October 1, 2009* | New section |
| Sec. 15 | *October 1, 2009* | New section |
| Sec. 16 | *October 1, 2009* | New section |
| Sec. 17 | *October 1, 2009* | New section |
| Sec. 18 | *October 1, 2009* | New section |
| Sec. 19 | *October 1, 2009* | New section |
| Sec. 20 | *October 1, 2009* | New section |
| Sec. 21 | *October 1, 2009* | New section |

| | | |
|---|---|---|
| Sec. 22 | *October 1, 2009* | New section |
| Sec. 23 | *October 1, 2009* | New section |
| Sec. 24 | *October 1, 2009* | New section |
| Sec. 25 | *October 1, 2009* | New section |
| Sec. 26 | *October 1, 2009* | New section |
| Sec. 27 | *October 1, 2009* | New section |
| Sec. 28 | *October 1, 2009* | New section |
| Sec. 29 | *October 1, 2009* | New section |
| Sec. 30 | *October 1, 2009* | New section |
| Sec. 31 | *October 1, 2009* | New section |
| Sec. 32 | *October 1, 2009* | 37-3a(a) |

***JUD*** *Joint Favorable Subst.*

## *OFA Fiscal Note*

***State Impact:*** None

***Municipal Impact:*** None

### *Explanation*

The bill codifies arbitration rules, standards, and common practices. It also makes other minor procedural changes that have no fiscal impact.

## *The Out Years*

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis**
**sHB 6628**

***AN ACT ADOPTING THE REVISED UNIFORM ARBITRATION ACT.***

**SUMMARY:**

This bill implements the Revised Uniform Arbitration Act (RUAA). It codifies arbitration rules, standards, and common practices that are currently not regulated by statute, but permits parties to waive or modify many of them. In this respect, the bill creates a statutory default procedure when the parties' arbitration agreement does not otherwise specify one. The bill covers:

1. the enforceability of agreements;
2. notice requirements;
3. court jurisdiction and procedures before the completion of an arbitration;
4. arbitrability;
5. arbitrators' qualifications, information they must disclose, and expands their powers;
6. arbitration proceedings; and
7. court proceedings after an award has been issued.

The bill's provisions do not apply to new arbitrations involving (1) teacher and government employee interest and dispute resolutions, (2) private sector employee collective bargaining grievances, or (3) lemon law car disputes.

It is unclear how the bill's provisions can be harmonized with existing arbitration laws, which the bill does not repeal. For example,

existing law prohibits arbitration of child support and visitation disputes; the bill has no such exclusion. It is also unclear how it will affect other arbitration agreements that incorporate the rules of an arbitration organization, such as the American Arbitration Association, when the organization's rules conflict with the RUAA's mandatory rules.

EFFECTIVE DATE: October 1, 2009

## § 29 — UNIFORM CONSTRUCTION

The bill directs that, in applying and construing this uniform act, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (Currently, 13 states have adopted the RUAA.) This provision cannot be waived or modified by the parties. However, existing state arbitration laws, which are not repealed, have been frequently interpreted by Connecticut courts, which is likely to undermine the need for uniformity among all the states.

## §§ 26 & 30 — ENFORCEABLE AGREEMENTS

The bill states that its provisions governing the legal effect, validity, or enforceability of electronic records or signatures and of contracts that contain them conform with § 102 of the federal Electronic Signatures in Global and National Commerce Act (P.L. 106-229), which regulates the use of electronic records and signatures in interstate and foreign commerce.

It appears to expand substantially the methods people can use to create arbitration agreements. It specifies that an "agreement" contained in a "record" to submit to arbitration any existing or future controversy between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract. It defines "record" as "information that is inscribed on a tangible medium that is stored in an electronic or other medium and is retrievable in perceivable form."

Permissible methods for creating arbitration agreements under

existing law are (1) written contracts or in a separate writing executed by the parties to any written contract that specifies arbitration of any controversy arising out of the contract, (2) written articles of association or bylaws of an association or corporation which require members to submit future controversies to arbitration, or (3) written agreements between two or more people to submit to arbitration any controversy existing between them. It permits legal and equitable principles for the avoidance of written contracts (such as fraud, lack of consideration, or unconscionability) to be grounds for making arbitration agreements invalid, revocable, or unenforceable.

### § 2 — NOTICE

The bill contains a general definition of notice that parties can waive or modify. It specifies that a person gives notice when he takes reasonably necessary action to inform another in ordinary course, regardless of whether that person actually learns about it. A person receives notice under this provision if he receives it or learns about it, or when the notice is delivered to his home, office, or other location he designated. "Persons" under the bill include people, government entities, businesses, and other legal and commercial entities.

Also, as described below, the bill has specific notice requirements, such as deadlines, in several of its provisions.

Existing arbitration laws do not define notice.

#### *§ 9 — Notice of Initiation of Arbitration Proceeding*

The bill creates an exception to the general rule for notices when a party seeks to initiate an arbitration proceeding. It specifies that unless the parties have agreed otherwise, they must do this by certified or registered mail, return receipt requested and obtained, or by a service method (such as personal delivery) permitted for beginning a civil lawsuit. The notice must describe the controversy and the requested remedy. If the parties have agreed to a different arrangement for giving notice, the bill specifies that it may be used if it is not unreasonably restrictive.

Parties who appear at the hearing waive objections based on lack of notice or insufficiency unless they object no later than at the beginning of the hearing. Parties can make other agreements for making or preserving these objections.

## COURT AUTHORITY

### *§§ 26, 27 & 5 — Jurisdiction and Venue Generally*

The Superior Court has exclusive jurisdiction to enter judgment on arbitration awards under the bill when the arbitration agreement provides for arbitration in the state. Its judges can enforce other arbitration agreements if the court has jurisdiction over the dispute and the parties. Once a controversy arises, parties can make other agreements about jurisdiction.

The bill specifies that applications for court relief must be filed by motion in Superior Court and heard in the manner provided by law or rule of the court for making and hearing such motions.

When a pending judicial proceeding involves a claim that a person maintains is arbitrable, the bill requires filing of motions in that court to compel arbitration. Otherwise, motions may be filed in the court in a location to which the parties have agreed. In the absence of an agreement, they must be filed (1) where the arbitration is being held; (2) in any judicial district in Connecticut where an adverse party resides or has an office; or (3) if no adverse party has a residence or office in Connecticut, in any Connecticut Superior Court. The bill permits parties to arbitration agreements to waive, vary, or modify this provision after a controversy arises.

It is unclear how these provisions would be enforced when they conflict with Connecticut Practice Book rules.

The bill also specifies that, unless the parties have agreed to a different rule, notice of an initial court motion must be served in the manner provided by law for service of a summons in a civil action. Service of subsequent motions can be given in the manner provided for pending civil cases.

### *§ 6 — Arbitrability*

Unless the parties agree otherwise, the bill directs courts to decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate. It directs arbitrators to decide whether a claim is ripe for arbitration and whether a contract containing a valid agreement to arbitrate is enforceable. When a party has refused to arbitrate, courts must decide whether the agreement is enforceable.

Existing statutes do not specify who decides these issues, but courts generally follow this rule.

### *§ 7 — Compelling Arbitration*

The bill's mandatory procedures require a party to file a motion showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement. If the refusing party does not appear or does not oppose the motion, the court must order the parties to arbitrate, unless it finds that there is no enforceable agreement.

If the refusing party opposes the motion, the court must proceed "summarily" to decide the issue and order the parties to arbitrate, unless it finds that there is no enforceable arbitration agreement. But it cannot refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

The law currently specifies that (1) applications for orders to proceed with (i.e., compel) arbitration must be made by writ of summons and complaint and (2) complaint allegations not answered within five days of the complaint's return date are deemed denied by operation of law. They must be filed in the Superior Court district where one of the parties resides or, when land is involved, in the court where the land is located. If the courts are closed, applications can be filed with any Superior Court judge. Judges must hear the matter either at a short calendar session, or as a privileged case, or otherwise, in order to dispose of the case with the least possible delay.

### *Motions to Stay Arbitration*

The bill permits people to file motions when an arbitration proceeding has been threatened or initiated and they claim that there is no arbitration agreement. As with motions to compel, the court must decide this issue summarily. If it finds that there is an enforceable arbitration agreement, it must order arbitration to proceed.

The bill permits an arbitrator to go forward with his proceeding while the court considers the challenge. But it permits (1) judges to order otherwise and (2) parties to make different agreements.

Existing law has no express mechanism for obtaining court orders to stay arbitrations.

### *Court Order Staying Court Proceedings*

If a judge orders arbitration, he must stay any judicial proceeding that involves a claim subject to the arbitration, unless he determines that it would not be just. Where not all claims in the court proceeding are subject to arbitration, the bill permits the judge to order a partial stay, permitting the lawsuit to continue with respect to non-arbitrable issues.

Existing law permits the filing of motions to stay court proceedings. It has a similar standard for granting them, but unlike the bill, requires the moving party to show that he is ready and willing to proceed with the arbitration.

### *§ 8 — Provisional Remedies*

Under the bill, before an arbitrator is appointed and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause, may enter orders for provisional remedies to protect the effectiveness of the arbitration proceeding. The bill specifies that the judge's authority is the same as if the controversy were the subject of a civil action.

But after an arbitrator has been appointed and is authorized to act, the bill provides that judges can order provisional remedies only if the

matter is urgent and the arbitrator is not able to act in a timely manner or the arbitrator cannot provide an adequate remedy. This appears to include the right to ask a judge to direct an arbitrator to conduct the hearing promptly and render a timely decision. The bill specifies that a party filing a court motion for provisional relief does not waive his right to arbitration by doing so.

Parties to arbitration agreements can waive the bill's provisional remedy provisions, or make other agreements, only after a particular controversy arises.

Under existing law, courts have the authority to issue provisional remedies (pendente lite orders) throughout the arbitration process to protect parties' rights and secure enforcement if an award in their favor is ultimately issued and confirmed.

### *§ 10 — Consolidations*

Unless the parties have agreed otherwise, the bill permits (1) any party to an arbitration agreement or proceeding to file a motion and (2) the court to order consolidation of separate arbitration proceedings as to all or some of the claims. They may do this if:

1. there are separate agreements to arbitrate or separate arbitration proceedings between the same people or entities or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third person;

2. the claims subject to the agreements arise in substantial part from the same transaction or series of related transactions;

3. the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

4. prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay, prejudice, or hardship to parties opposing consolidation.

The bill permits judges to order consolidation of arbitration proceedings on some claims and allow other claims to be resolved in separate proceedings. But it cannot consolidate the claims of a party whose agreement prohibits consolidation.

Existing law has no consolidation provision.

## §§ 11-14 — ARBITRATORS

### *Appointing Arbitrators*

The bill permits parties to agree on a method for appointing an arbitrator or arbitration panel and requires them to follow it unless the method fails. But it specifies that the court must appoint arbitrators on motion of any party if (1) the parties cannot agree, (2) the agreed-upon method fails, or (3) an appointed arbitrator fails or is unable to act and a successor has not been appointed. Court-appointed arbitrators have all the powers of the arbitrator designated in the arbitration agreement or appointed pursuant to the agreed method.

The bill's provisions are similar to the requirements in the existing law, although the existing law specifies that such proceedings be initiated and decided in the same way as applications to proceed with arbitrations. Existing law also specifies that when a substitute or additional arbitrator is appointed to a case where evidence has already been presented, that person must re-hear the case unless the parties agree in writing otherwise.

### *Required Disclosures by Arbitrators*

Unless the parties agree otherwise, and the scope of their agreement does not unreasonably restrict the parties' rights to disclosure, before accepting appointment to serve as arbitrator, a person must make reasonable inquiry and disclose to all parties and to any other arbitrators any known facts that a reasonable person would consider likely to affect his impartiality. Information that must be disclosed under the bill includes (1) any financial or personal interest in the outcome of the arbitration proceeding and (2) any existing or past relationship with any of the parties to the agreement to arbitrate or the

arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

The bill specifies that a person appointed as a neutral arbitrator who does not disclose the above information is presumed to have acted with evident partiality, and that a court may vacate his award on that basis.

Arbitrators must continue to disclose to all parties and other arbitrators facts that they learn after accepting appointment that a reasonable person would consider likely to affect the arbitrator's impartiality.

Existing statutes do not have information disclosure provisions.

Unless the parties agree otherwise, the bill prohibits a person with a known, direct, and material interest in the outcome of the arbitration proceeding, or a known, existing, and substantial relationship with a party to serve as a neutral arbitrator. There is no similar provision in existing law.

### *Objections to an Arbitrator's Appointment or Continued Service*

The bill requires parties to make "timely" objections to an arbitrator's appointment, both when he discloses a fact and when he does not disclose a fact that he should have. In the absence of an agreement between the parties as to what constitutes a timely objection, it is unclear what the bill's time limits are. The bill also specifies that parties who have agreed to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made must comply substantially with those before asking a court to vacate an award on evident partiality grounds.

Existing law, which permits courts to vacate awards when they determine that the arbitrator did not act impartially, does not specifically require parties to have first objected to the arbitrator.

### *Arbitrator and Arbitration Organization Immunity*

The bill specifies that an arbitrator and an arbitration organization, acting in those capacities, have the same immunity in civil lawsuits as Superior Court judges have. (By law, judges are immune from liability for actions taken in their judicial capacity.) The bill specifies that an arbitrator's failure to disclose required personal or financial information to the parties or other arbitrators does not strip him of this immunity and that this immunity supplements any immunity under other law.

The bill also specifies that arbitrators and arbitration organization representatives are not competent (i.e., cannot) to testify in judicial, administrative, or similar proceedings. They can only be required to produce records concerning any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a state court judge acting in a judicial capacity. But the bill does not apply if testimony or records are needed to determine an arbitrator or arbitration organization's claim against a party to the arbitration proceeding (such as for unpaid fees) or to a hearing on a motion to vacate when the moving party establishes a prima facie case (i.e., makes a preliminary showing) of misconduct by an arbitrator.

The bill requires courts to award arbitrators and arbitration organizations attorney's fees and other reasonable costs of litigation when they are sued or a person seeks to compel them to testify or produce records but the court finds they are immune from civil liability or incompetent to testify.

These provisions of the bill cannot be waived. Existing law does not afford arbitrators immunity or shield them from testifying.

### *Arbitration Panels*

Unless the parties agree otherwise, the bill specifies that when more than one arbitrator is designated to decide an issue (i.e., a panel), the decision of a majority must be obtained. But all must conduct an arbitration hearing. This is consistent with existing law.

## §§ 15-21 — ARBITRATION PROCEEDINGS

Unless the parties agree otherwise, the bill permits arbitrators to handle proceedings in the manner they consider appropriate for a fair and expeditious disposition. They may hold conferences before the hearing and, among other things, determine the admissibility, relevance, material value, and weight of evidence. And they may order such provisional remedies as they determine are necessary to protect the arbitration process.

Under the bill, they may also decide claims or issues summarily if all interested parties agree or when one party requests this and gives notice of the request to all other parties to the proceeding. The parties must have a reasonable opportunity to respond.

### *Subpoenas and Depositions*

As under existing law, the bill also gives arbitrators the power to administer oaths and issue subpoenas directing witnesses to attend and produce documents at any hearing. It directs them to serve subpoenas in the same way as for civil actions, and it permits any party or the arbitrator to file a court motion and have a judge enforce the subpoena in the same manner that he would in a civil action. Parties can waive this rule after a controversy arises.

Currently, both arbitrators and others legally authorized to issue subpoenas (such as a party's lawyer) may issue these subpoenas. It appears that, under the bill, only arbitrators may do so unless the parties agree otherwise.

The bill permits arbitrators, in order to make the proceedings fair, expeditious, and cost-effective, to allow the taking of depositions for use as evidence at the hearing. They may specify the conditions under which they are taken. Witnesses who may be deposed in this manner include those who cannot be subpoenaed for, or are unable to attend, a hearing. Parties can waive this rule or make other agreements after a controversy arises. There is no similar provision in existing statutes.

### *Discovery*

Unless the parties agree otherwise, arbitrators under the bill may

also permit the parties to engage in discovery (i.e., gather information through written requests or depositions to prepare for the arbitration hearing). The arbitrator must take into account the needs of the parties and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective. When discovery is permitted, arbitrators can order parties to comply, and issue discovery subpoenas, and have the same power as Superior Court judges to take action against people who fail to comply. There is no similar provision in existing law.

The bill gives the arbitrator the authority to issue a protective order to prevent the disclosure of privileged or confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in the state. It specifies that all laws compelling a person under subpoena to testify and all witness fees applicable in court proceedings also apply to arbitrations.

### *Court Enforcement*

The bill permits courts to enforce an arbitrator's subpoena or discovery-related orders, but their powers depend on whether the matter involves in-state or out-of-state proceedings. They may order the attendance of witnesses within the state. But in cases where an arbitrator asks them to enforce his order directing someone to produce records or other evidence at an out-of-state proceeding, they may set conditions to make the arbitration proceeding fair, expeditious, and cost-effective. The bill requires subpoenas or discovery-related orders from out-of-state arbitrators to be served in the manner provided under Connecticut law for serving subpoenas in a civil action.

Existing law permits courts to enforce an arbitrator's or other party's subpoenas summoning witnesses or documents to a hearing but does not distinguish between in-state and out-of-state arbitrations. The bill appears to eliminate parties' right to judicial enforcement of subpoenas they issue.

### *Hearings*

Unless the parties agree otherwise, the arbitrator must set a time and place and give notice of the hearing at least five days in advance. Unless a party to the arbitration proceeding objects to the lack or insufficiency of notice by the beginning of the hearing, his appearance at the hearing waives the objection. Existing statutes do not specify how much advance notice parties must get, or provide for the waiver of objections to the adequacy of hearing notices.

The bill specifies that, unless the parties agree otherwise, a party to an arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing. A lawyer may represent a party, but the bill permits post-controversy agreements to the contrary. Existing statutes contain no similar provisions.

Hearings may be adjourned by the arbitrator or if any party requests it and shows good cause for adjournment. The bill specifies that hearings cannot be postponed to a time later than that fixed by the arbitration agreement for making the award unless the parties consent.

Unless the parties have agreed otherwise, the bill gives the arbitrator the authority to proceed and decide controversies upon the evidence presented when a party who was "duly notified" of the proceeding does not appear. The bill's provisions are consistent with existing law.

### *Pre-award Rulings*

The bill requires arbitrators to incorporate a favorable pre-award ruling (i.e., an interim ruling disposing of only some issues or claims) in an award if the prevailing party requests it. The prevailing party may then file a court motion for an expedited order confirming the award, which the court must decide summarily. The court must issue an order to confirm the award unless the court vacates, modifies, or corrects it on grounds specified by the bill. This provision of the bill cannot be waived or altered by agreement.

Existing law does not specifically permit parties to bring pre-award

rulings before the courts.

### *Awards*

Unless the parties agree otherwise, the arbitrator must make a record of his award. Any other arbitrator concurring with it must either sign or otherwise "authenticate" it. Either the arbitrator or the arbitration organization must give notice and a copy of the award to each party. The bill specifies that the award must be made within the time specified by the agreement to arbitrate, or if not specified, within the time ordered by the court.

These provisions are consistent with existing law, although existing law specifies that when the parties' agreement is silent, the time limit is 30 days from the close of the hearing or from the date fixed for the submission of materials to the arbitrator (such as briefs) after the hearing concludes.

Courts can extend or the parties may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. Unless the parties agree otherwise, a party waives any objection that the award was not timely unless he objects to the arbitrator before he receives notice of the award.

Currently, an award issued after time limits have expired has no legal effect unless the parties have agreed in writing to be bound by it.

### *Motions to the Arbitrator to Modify or Correct*

Unless otherwise agreed, parties may ask the arbitrator by motion to modify or correct an award for the following reasons:

1. evident mathematical miscalculation or mistake in the description of a person, thing, or property referred to in the award;

2. the award is imperfect in a matter of form not affecting the merits of the decision;

3. because the arbitrator has not made a final and definite award

on a claim that was submitted to him; or

4. to clarify the award.

Motions must be filed within 20 days after the moving party receives notice of the award, and he must give notice to all parties. Objections must be filed within 10 days of receipt. The latter deadline cannot be waived or modified.

Existing law has no similar provisions.

### *Remedies*

Unless the parties have specified otherwise, the bill permits arbitrators to award punitive and exemplary damages when such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim. If the arbitrators do so, the award must specify their factual and legal justification. It must also state separately the amount of the punitive damages or other exemplary relief.

The bill also permits arbitrators to award reasonable attorneys fees and other arbitration costs if this is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration. Parties may waive or modify this provision.

For all other remedies, the bill authorizes arbitrators, absent agreement of the parties, to fashion such remedies as they consider just and appropriate under the circumstances of the arbitration proceeding.

The bill specifies that, absent agreement, an arbitrator's expenses and fees, together with other expenses must be paid as provided in the award.

Existing law does not expressly address remedies. Parties may raise this issue in a motion to vacate, claiming that the arbitrator did not have the authority to order a particular remedy.

## § 32—INTEREST ON AWARDS

The bill sets the interest rate of 10% on monetary awards owed but not paid. This the same rate applies to other types of arbitration awards and unpaid civil damages.

## §§ 22-25 — POST-ARBITRATION COURT PROCEEDINGS

### *Motion to Confirm*

The bill permits parties to file court motions to confirm an arbitrator's award and requires courts to grant them unless they modify, correct, or vacate the award at the request of another party. This rule cannot be waived.

Existing law requires such motions to be filed within one year of the award, but the bill does not specify a time limit. The bill also specifies that parties applying for these orders (and for orders to modify or vacate an award) must also include (1) the arbitration agreement; (2) substitute arbitrator appointment documentation, if appropriate; (3) written referrals to courts for legal interpretations during the arbitration, if appropriate; (4) written extensions of award deadlines; (5) the award; (6) notices and other court documents relating to the application; and (7) court orders relating to it. The bill eliminates these requirements as of October 1, 2009.

### *Motion to Vacate*

The bill requires parties to file motions to vacate within 90 days of (1) receiving notice of the award or (2) receiving notice of a modified or corrected award. Where the moving party alleges that the award was procured by corruption, fraud, or other undue means, he must file the motion within 90 days after he learns, or in the exercise of reasonable care, should have learned, this information.

These time limits cannot be waived or modified by agreement. Under existing law, all motions to vacate must be filed within 30 days of receipt of the notice of an award.

The bill requires courts to vacate an award if:

1. it was procured by corruption, fraud, or other undue means;

2. there was (a) evident partiality by an arbitrator appointed as a neutral, (b) corruption by an arbitrator, or (c) misconduct by an arbitrator prejudicing the rights of a party;

3. an arbitrator refused to postpone the hearing upon showing of sufficient cause, refused to consider evidence material to the controversy, or otherwise substantially prejudiced a party's rights by the manner in which he conducted the hearing;

4. an arbitrator exceeded his powers;

5. there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising this objection before or when the hearing began; or

6. the arbitration was conducted without proper notice and a party's rights were substantially prejudiced as a result.

The parties cannot waive or modify these reasons by agreement. Existing law establishes the first four criteria as grounds for vacating an award. It also permits this when an arbitrator carried out his authority so imperfectly that the resulting award is not mutual, final, or definite.

Under the bill, courts that grant a motion to vacate may order re-hearings in cases unless the reason for vacating the award is lack of agreement to arbitrate or where the time limits for issuing the award have expired. In cases where the reason for vacating the award is one involving corruption or misconduct by an arbitrator, a different arbitrator must conduct the rehearing. When the reason involves lack of notice, or an arbitrator's refusal to postpone or acting in excess of his powers, the court may permit him to conduct the rehearing. Arbitrators must render decisions on rehearings within deadlines set for issuance of the original award.

Under existing law, courts may direct rehearings when the time

limits for issuing an award have not expired. They must do so in labor arbitration proceedings, regardless of these time limits, unless a party shows that there is no issue in dispute.

Under the bill, courts that deny a motion to vacate must simultaneously confirm the award, unless a motion to modify or correct has been filed within the bill's time limits. Courts may join proceedings arising from motions to vacate and to modify or correct. There are no similar provisions in existing law.

### *Motions to Modify or Correct*

Courts can grant motions to modify or correct for the same reasons that they can re-submit cases to arbitrators, i.e., evident mathematical errors, mistaken identifications in the award, and formal defects that do not affect the merits of the decision. They may also do so when the arbitrator makes an award on a claim that the parties did not submit to him or her, so long as the award can be corrected without affecting the merits of the arbitrator's decision on the questions submitted to him.

Motions must be filed within 90 days of the original award or 90 days after an arbitrator modifies or corrects it. If the court grants the motion, it must modify or correct the award and confirm it. If it denies the motion, it must confirm the award unless a motion to vacate is pending. These provisions cannot be waived.

The existing limitation period for filing these motions is 30 days from notice of the award.

### *Court Remand to Arbitrator*

When a party has filed a motion in court to confirm, vacate, modify, or correct an award, the bill allows the court to return the matter to the arbitrator to consider whether to modify or correct his award for any of the above reasons. Parties cannot vary this by agreement.

Modified or corrected awards must be in records and signed or authenticated by other concurring arbitrators, as is required for the initial award. Parties can ask courts to confirm, enforce, modify, or

correct them unless they have agreed otherwise.

Existing law has no similar provision.

## § 28 — APPEALS

Unless the parties have agreed otherwise in a particular controversy, the bill allows appeals to be taken from a Superior Court order:

1. denying a motion to compel arbitration,
2. granting a stay of arbitration proceedings,
3. confirming or denying confirmation of an award,
4. modifying or correcting an award,
5. vacating an award without directing a rehearing, or
6. of final judgment in a covered proceeding.

It specifies that the same rules that apply to appeals from court orders or judgments in civil matters apply to these appeals.

Existing law does not permit appeals from the denial of a motion to compel arbitration or the granting of a stay of arbitration proceedings.

## COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 41 Nay 1 (04/03/2009)